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*Attorneys for Defendant Mountainside Fitness
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Chet Michael Wilson, individually and on behalf of all others similarly situated,

NO. 2:25-cv-01481-MTL

**DEFENDANT MOUNTAINSIDE
FITNESS ACQUISITION, LLC'S
NOTICE OF SUPPLEMENTAL
AUTHORITY**

Plaintiff,

V.

Mountainside Fitness Acquisition, LLC

Defendant.

Defendant Mountainside Fitness Acquisition, LLC (“Mountainside”) hereby submits this notice of supplemental authority to alert the Court to *Aliana El Sayed v. Naturopathica Holistic Health, Inc.*, 2025 WL 2997759 (M.D. Fla. Oct. 24, 2025), a decision issued last week that bears on the pending Motion to Dismiss in this case, ECF 13.

El Sayed holds that “the statutory text [of the TCPA] is clear, and a text message is not a ‘telephone call.’” *Id.* at *2 (quoting *Davis v. CVS Pharmacy, Inc.*, 2025 WL 2491195, at *1 (N.D. Fla. Aug. 26, 2025)). The *El Sayed* court reached this conclusion on two discrete but equally dispositive grounds. First, the court found that, in common American English usage, a “telephone call” and “text message” are separate and distinct forms of communication. *Id.* Second, Congress clearly understood the difference between a telephone call and a text message, and “legislated mindful of the distinction” when drafting Section 227(c)(5). *Id.* (citing Consolidated Appropriations Act, 2018, Pub. L. No. 115-141,

1 div. P, § 503(a) (codified at 47 U.S.C. §§ 227(e)(8)(A)–(B)) (distinguishing between “a call
 2 made using a voice service” and “a text message sent using a text messaging service”). *El
 3 Sayed* aligns with Mountainside’s argument that text messages are not telephone calls under
 4 Section 227(c)(5) and therefore do not confer a private right of action to Plaintiff in this
 5 case. *See id.* at *2 (“The omission of ‘text message’ from paragraph 227(c)(5) confirms that
 6 the provision applies only to a ‘telephone call.’”).

7 The *El Sayed* decision also rejects certain arguments put forward by Plaintiff in its
 8 Opposition, ECF 17. For instance, when Plaintiff argues that the word “call” in the TCPA
 9 includes text messages, it relies heavily on FCC guidance to make its point. *See ECF 17 at*
 10 13 (“[T]he FCC has recognized since 2003 that when the TCPA says ‘call,’ it means not
 11 just traditional voice calls but also modern text messages.”); and at *8 (“[T]he FCC’s
 12 position is the best reading of the statute’s text.”). But the *El Sayed* decision specifically
 13 rejects Plaintiff’s position. The court recognized the voice call provisions of the TCPA have
 14 only been extended to text messages via the rulemaking authority of the FCC, and that
 15 District Courts are now no longer “bound by the FCC’s interpretation of the TCPA.” *Id.* at
 16 *1 (quoting *McLaughlin Chiropractic Associates, Inc. v. McKesson Corporation*, 606 U.S.
 17 146, 168 (2025)). As such, when one reads Section 227(c)(5), “the text is clear, [and] the
 18 analysis begins and ends there.” *Id.* (quoting *Davis*, 2025 WL 2491195, at *1). Because
 19 Section 227(c)(5) is written to apply only to “telephone calls”, and the phrase “text
 20 message” is entirely absent from same, the statute applies only to a “telephone call.”

21 A copy of the order in *El Sayed* is attached hereto as **Exhibit A**.

22 RESPECTFULLY SUBMITTED this 27th day of October, 2025.

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27 By: /s/ John M. O’Neal
 28 John M. O’Neal

Attorney for Defendant Mountainside
 Fitness Acquisition LLC

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on October 27, 2025, I caused a true and correct copy of the
3 foregoing document to be filed with the Clerk of the Court through the U.S. District Court
4 Electronic Court Filing System, which caused notice of such filing to be sent electronically
5 to the registered attorneys of record.

6 _____
7 */s/ Debra L. Hitchens*
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